

SENATE SUBSTITUTE
FOR
HOUSE BILL NO. 2023

AN ACT

To repeal sections 162.670, 162.675, 162.961 and 162.962, RSMo, and to enact in lieu thereof four new sections relating to the appropriate educational placement of students.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 162.670, 162.675, 162.961 and 162.962 ,
2 RSMo, are repealed and four new sections enacted in lieu thereof,
3 to be known as sections 162.670, 162.675, 162.961 and 162.962, to
4 read as follows:

5 162.670. In order to fully implement section 1(a) of
6 article IX, constitution of Missouri, 1945, providing for the
7 establishment and maintenance of free public schools for
8 gratuitous instruction of all persons in this state within ages
9 not in excess of twenty-one years as prescribed by law, it is
10 hereby declared the policy of the state of Missouri to provide or
11 to require public schools to provide to all handicapped and
12 severely handicapped children within the ages prescribed herein,
13 as an integral part of Missouri's system of gratuitous education,
14 [special educational services sufficient to meet the needs and
15 maximize the capabilities of handicapped and severely handicapped
16 children] a free appropriate education consistent with the
17 provisions set forth in state and federal regulations
18 implementing the Individuals with Disabilities Education Act

1 (IDEA), 20 U.S.C. Section 1400 et seq. and any amendments
2 thereto. The need of such children for early recognition,
3 diagnosis and intensive educational services leading to more
4 successful participation in home, employment and community life
5 is recognized. The timely implementation of this policy is
6 declared to be an integral part of the policy of this state.

7 162.675. As used in sections 162.670 to 162.995, unless the
8 context clearly indicates otherwise, the following terms mean:

9 (1) "Gifted children", children who exhibit precocious
10 development of mental capacity and learning potential as
11 determined by competent professional evaluation to the extent
12 that continued educational growth and stimulation could best be
13 served by an academic environment beyond that offered through a
14 standard grade level curriculum;

15 (2) "Handicapped children", children under the age of
16 twenty-one years who have not completed an approved high school
17 program and who, because of mental, physical, emotional or
18 learning problems, require special educational services [in order
19 to develop to their maximum capacity];

20 (3) "Severely handicapped children", handicapped children
21 under the age of twenty-one years who, because of the extent of
22 the handicapping condition or conditions, as determined by
23 competent professional evaluation, are unable to benefit from or
24 meaningfully participate in programs in the public schools for
25 handicapped children. The term "severely handicapped" is not
26 confined to a separate and specific category but pertains to the
27 degree of disability which permeates a variety of handicapping
28 conditions and education programs;

1 (4) "Special educational services", programs designed to
2 meet the needs [and maximize the capabilities] of handicapped or
3 severely handicapped children and which include, but are not
4 limited to, the provision of diagnostic and evaluation services,
5 student and parent counseling, itinerant, homebound and referral
6 assistance, organized instructional and therapeutic programs,
7 transportation, and corrective and supporting services.

8 162.961. 1. The resolution conference provided for in
9 section 162.950 shall be conducted by the chief administrative
10 officer of the responsible school district or a designee. The
11 conference shall be informal, witnesses need not be sworn and a
12 record of the proceedings need not be made. The school district
13 or the state department of elementary and secondary education
14 shall see that the parent or guardian or his representative is
15 advised of and permitted to review all diagnoses, evaluations and
16 reevaluations obtained by the board of education or the state
17 department of elementary and secondary education which pertain to
18 the child. The school district or state department of elementary
19 and secondary education shall fully advise the parents or
20 guardian or their representative of each reason relied upon by it
21 in taking the proposed action. The parents or guardian or their
22 representative may present any information whether written or
23 oral to the officer which pertains to the recommended action.
24 Questioning of all witnesses shall be permitted.

25 2. The resolution conference may be waived by the parents
26 or guardian. If the parent or guardian waives the resolution
27 conference and requests a three-member panel hearing, the state
28 board of education shall empower such a panel pursuant to

1 subsection 3 of this section. That empowerment shall take place
2 within fifteen days of the request for the three-member panel
3 hearing.

4 3. A parent, guardian or the responsible educational agency
5 may request a due process hearing by the state board of education
6 with respect to any matter relating to identification,
7 evaluation, educational placement, or the provision of a free
8 appropriate public education of the child. Such request shall
9 include the child's name, address, school, issue, and suggested
10 resolution of dispute if known. Except as provided in subsection
11 6 of this section, the board or its delegated representative
12 shall within fifteen days after receiving notice empower a
13 hearing panel of three persons who are not directly connected
14 with the original decision and who are not employees of the board
15 to which the appeal has been made. All of the panel members
16 shall have some knowledge or training involving children with
17 disabilities, none shall have a personal or professional interest
18 which would conflict with his or her objectivity in the hearing,
19 and all shall meet the department of elementary and secondary
20 education's training and assessment requirements pursuant to
21 state regulations. One person shall be chosen by the local
22 school district board or its delegated representative or the
23 responsible educational agency, and one person shall be chosen at
24 the recommendation of the parent or guardian. If either party
25 has not chosen a panel member ten days after the receipt by the
26 department of elementary and secondary education of the request
27 for a due process hearing, such panel member shall be chosen
28 instead by the department of elementary and secondary education.

1 Each of these two panel members shall be compensated pursuant to
2 a rate set by the department of elementary and secondary
3 education. The third person shall be appointed by the state
4 board of education and shall serve as the chairperson of the
5 panel. The chairperson shall be an attorney licensed to practice
6 law in this state. During the pendency of any three-member panel
7 hearing, or prior to the empowerment of the panel, the parties
8 may, by mutual agreement, submit their dispute to a mediator
9 pursuant to section 162.959.

10 4. The parent or guardian, school official, and other
11 persons affected by the action in question shall present to the
12 hearing panel all pertinent evidence relative to the matter under
13 appeal. All rights and privileges as described in section
14 162.963 shall be permitted.

15 5. After review of all evidence presented and a proper
16 deliberation, the hearing panel, within forty-five days of
17 receipt of the request for a due process hearing, except as
18 provided in subsection 6 of this section relating to expedited
19 hearings, shall by majority vote determine its findings,
20 conclusions, and decision in the matter in question and forward
21 the written decision to the parents or guardian of the child and
22 to the president of the appropriate local board of education or
23 responsible educational agency and to the department of
24 elementary and secondary education. A specific extension of the
25 time line may be made by the chairman at the request of either
26 party, except in the case of an expedited hearing as provided in
27 subsection 6 of this section.

28 6. An expedited due process hearing by the state board of

1 education may be requested by a parent to challenge a
2 [discipline] disciplinary change of placement [to an interim
3 alternative educational setting,] or to challenge a manifestation
4 determination in connection with a disciplinary [action involving
5 a forty-five day placement for weapons, drugs, or because the
6 child is a danger to himself or others,] change of placement or
7 by a responsible educational agency to seek a forty-five day
8 alternative educational placement for a dangerous or violent
9 student. The board or its delegated representative shall appoint
10 a hearing officer to hear the case and render a decision within
11 the time line required by federal law and state regulations
12 implementing federal law. The hearing officer shall be an
13 attorney licensed to practice law in this state. The hearing
14 officer shall have some knowledge or training involving children
15 with disabilities, shall not have a personal or professional
16 interest which would conflict with his or her objectivity in the
17 hearing, and shall meet the department of elementary and
18 secondary education's training and assessment requirements
19 pursuant to state regulations. A specific extension of the time
20 line is only permissible to the extent consistent with federal
21 law and pursuant to state regulations.

22 7. If the responsible public agency requests a due process
23 hearing to seek a forty-five day alternative educational
24 placement for a dangerous or violent student, the agency shall
25 show by substantial evidence that there is a substantial
26 likelihood the student will injure himself or others and that the
27 agency made reasonable efforts to minimize that risk, and shall
28 show that the forty-five day alternative educational placement

1 will provide a free appropriate public education which includes
2 services and modifications to address the behavior so that it
3 does not reoccur, and continue to allow [access to] progress in
4 the general education curriculum.

5 162.962. In a case where review of the hearing panel's
6 decision is sought by a school district or a parent or guardian,
7 either party may appeal as [provided in chapter 536, RSMo.]
8 follows:

9 (1) The court shall hear the case without a jury and except
10 as otherwise provided in subsection 4 of 536.140, RSMo, shall
11 hear it upon the petition and record filed as provided in
12 sections 162.950 to 162.961;

13 (2) The inquiry may extend to a determination of whether
14 the action of the agency:

15 (a) Is in violation of constitutional provisions;

16 (b) Is unsupported by competent and substantial evidence
17 upon the entire record;

18 (c) Is made upon unlawful procedure or without a fair
19 trial;

20 (d) Is arbitrary, capricious, or unreasonable; or

21 (e) Involves an abuse of discretion.